

Electric Machinery Enterprises, Incorporated and Local 915, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 12-RC-6388

28 March 1984

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 6 July 1983 the Regional Director for Region 12 issued a Decision and Direction of Election in which he found, *inter alia*, that the petitioned-for unit, limited to only one of the Employer's construction sites, was inappropriate and that the smallest appropriate unit should include all of the Employer's jobsites located within Hillsborough County, Florida. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedures, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that the Regional Director erred on a substantial factual issue and departed from officially reported precedent, and that the only appropriate unit was one which included all jobsites within its "Tampa Construction Division." The Petitioner filed a statement in opposition to the request for review.

The Board, by telegraphic order dated 9 August 1983, granted the request for review and stayed the scheduled election.¹ Thereafter, the Employer filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's brief on review, and makes the following findings:

The Employer, an electrical contractor, performs work both within and without the State of Florida at a variety of construction sites. At the time of the hearing, its Tampa Construction Division included 51 jobsites located in 11 cities within 8 counties (mainly in northern and central Florida) with the majority of sites located in Hillsborough County, and several in contiguous or nearby counties such as Pasco, Pinellas, and Lee. Thirty-two of these projects are located in the Tampa area, including the Big Bend project, which Petitioner maintained

was so distinct from all other projects as to constitute a single appropriate unit.

There is a prior history of bargaining between the Employer and the International Brotherhood of Electrical Workers; and between 1945 and 1977 the Employer was party to collective-bargaining agreements with Local 915, the Petitioner, and other locals covering its journeymen, apprentices, and electrical wiremen. These agreements covered particular jobsites within the geographical jurisdiction of the locals, with the exception of the Employer's "Sound and Signal" and "Service" divisions which another IBEW local has represented on a division-wide basis for the past 15 years.

The Tampa Construction Division is headquartered in Tampa itself and is highly centralized in its operations and administration. All billing, purchasing, personnel, and payroll records are handled at that office. There are four project managers for the Division who report directly to the Employer's president, Jaime Jurado, who is also the head of the Tampa Construction Division. In addition, the managers of the Employer's other divisions—Fort Lauderdale Construction, Service, Sound and Signal, Modular, and North American Telephone—all report to Jurado. Of the four Tampa Construction project managers, only one is assigned to a single project—Big Bend—while the other three oversee the remaining 50 sites. In addition, there is an on-site project superintendent or general foreman who supervises day-to-day operations at each location.

Jurado testified that the Employer does not hire for a specific job, but assigns employees to its various sites as needed. Job applicants generally come into the main office and fill out an application package which is reviewed by one of the project managers. The project manager then screens the applicant. If found to be satisfactory, the applicant is referred to one of the jobsites. Occasionally, an applicant might be told to meet a project manager at a particular site and the interview is conducted there. The Big Bend project manager testified he has directed his project superintendent to interview on-site occasionally (or the two general foremen may interview if neither he nor the project superintendent is available), and that these individuals may hire an applicant they have interviewed.

The Employer has established a general wage scale for the entire division. The project manager sets an initial salary by assigning the employee to a particular job classification. Merit increases may be initiated by the project foreman, then reviewed and approved by the project manager. The Big Bend project manager testified that new employees generally are reviewed after 30 days for such merit in-

¹ Review also was granted as to the issue of the unit placement of the positions of material transporters and main office mechanics whom the Regional Director excluded from the unit he found appropriate. Inasmuch as this Decision on Review dismisses the petition, it is not necessary to reach that issue.

creases, and that other projects follow the same policy. Uniform labor relations policies are set by Jurado as well as uniform companywide benefits including a health and welfare insurance plan, vacations, holiday schedules, and rate of overtime pay. Seniority is determined on a divisionwide basis, rather than by project, and employees are either transferred or laid off by seniority when a project is completed. The same job classifications exist at the various sites. Employee skills and training are similar, as is the work performed at all sites, so that when an employee is transferred from one project to another his earnings and job classification remain the same. The Employer also participates in an apprenticeship program through the Electrical Workers Association and apprentices are transferred from project to project under that program.

The Employer began work at Big Bend around January 1982, with 12-15 employees transferred in from other projects. Documentary evidence submitted by the Employer reveals that between March 1982 and March 1983, approximately 47 employees transferred to Big Bend, including approximately 10 foremen; and that approximately 32 of the transfers came from other Hillsborough County sites. In addition, the project superintendent and the two general foremen at Big Bend were transferred from other projects. The Employer's exhibits also show that in the 6-month period between January and July 1982, approximately 30 of the 35 employees transferred from Big Bend to other projects were transferred to other sites within Hillsborough County. These transfers included supervisors, journeymen, helpers, and apprentices. At the time of the hearing, there were 180 employees at Big Bend.

In seeking a unit limited to Big Bend, the Petitioner contended that the work being performed there is distinct from the work being performed at the Employer's other projects, and that the owner and manager of the Big Bend project impose certain controls over the Employer which are not imposed at any other project. Further, both new employees and employees who have been transferred to Big Bend have been required to take welding or pipe bending tests, even though they may have worked for the Employer for several years and on many projects. These tests are not given at any of the other projects. The record shows that the work being performed at Big Bend is of the same nature as that being performed at the various other projects throughout the Division. It does appear, however, that the Employer's contract with the Tampa Electric Company (the owner of the Big Bend project) requires certain quality control pro-

cedures or requirements that the other projects do not impose, and that the Employer has chosen these tests as a means of ensuring compliance with those guidelines. Moreover, the Big Bend project manager testified that although all welders employed at Big Bend must be certified, it is not a condition of employment for employees other than welders to pass the test. Also, he indicated that other projects may have certain tests or certification requirements which would not be required throughout the Division.

A single location unit is presumptively appropriate, unless it is established that the single location has been effectively merged into a more comprehensive unit so as to have lost its individual identity. *Petrie Stores Corp.*, 266 NLRB 75 (1983); *Frisch's Big Boy*, 147 NLRB 551 (1964). Thus, while the Regional Director found that the Big Bend project alone did not constitute a single appropriate unit, he determined that a unit consisting of all projects within Hillsborough County would be appropriate, notwithstanding evidence of divisionwide centralized administration, common overall supervision, uniform benefits and labor relations policies, substantial transfers, and similar work and skills. In so finding, he relied on the facts that 62 percent of all of the Employer's jobsites are in Hillsborough County and transfers at Big Bend have been mostly to and from other Hillsborough County sites.

We agree with the Regional Director's finding that the evidence does not demonstrate a separate and distinct community of interest at Big Bend warranting a single location unit. However, we cannot agree with his finding that a unit limited to Hillsborough County sites would be appropriate where the record demonstrates the substantial community of interest shared throughout the entire Tampa Construction Division.

It is clear that all employees in the Division share the same skills, perform similar work in the same job classifications, are hired to work for the Company in general rather than for a specific project, and are paid according to a general wage scale set for the Division. In addition, the Employer often transfers employees into comparable jobs throughout the Division, and the apprentices in its apprenticeship program are transferred from project to project. All labor relations and disciplinary policies are uniform and administered divisionwide, as are all benefits including a health and welfare plan, paid holidays, and paid vacation time. Seniority is established divisionwide, rather than by project or county, and this seniority status is used to determine choice of vacations as well as layoffs. Although the majority of the Division's work is

done within Hillsborough County, the record shows that 38 percent of the Employer's jobsites, over one-third, are located in other counties. In many instances, the jobsites located outside Hillsborough County are actually closer to the Employer's main office than are some of the jobsites within the county itself. Moreover, while the Big Bend project apparently requires the largest number of employees and has its own project manager, the record shows that transfers to or from Big Bend are not "almost exclusively" contained within the County, but are made according to layoffs and project completions wherever they occur; and that at least 32 percent of the transfers to Big Bend came from outside Hillsborough County and 17 percent of the transfers from Big Bend were to jobsites in counties other than Hillsborough.

In light of the factors discussed above, particularly the uniform working conditions and employee skills, the significant employee interchange between all jobsites in the Division, the common hiring and

wage rates, the Employer's centralized administration and operations, the divisionwide seniority system, and the lack of substantial autonomy on the part of the superintendent or foremen at each construction site, we find that neither a unit limited only to the Big Bend jobsite nor a unit limited only to sites within Hillsborough County is appropriate for collective bargaining. *Petrie Stores Corp.*, supra; *Orkin Exterminating Co.*, 258 NLRB 773 (1981). Rather, we find that the smallest appropriate unit must include all of the Employer's construction sites within its Tampa Construction Division.

Since we have found that both the unit sought by the Petitioner and the unit found appropriate by the Regional Director are inappropriate for collective bargaining, and the Petitioner has not indicated that it desires to proceed to an election in a broader unit, we shall dismiss the petition.

ORDER

It is ordered that the petition be dismissed.